



# NEWS RELEASE

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## Summary of Cases Accepted During the Week of October 24, 2005

*[This news release is issued to inform the public and the press of cases that the Supreme Court has accepted and of their general subject matter. The statement of the issue or issues in each case set out below does not necessarily reflect the view of the court, or define the specific issues that will be addressed by the court.]*

**#05-205 *People v. Medina, S137055.*** (B169140; 131 Cal.App.4th 493; Los Angeles County Superior Court; NA054131.) Petition for review after the Court of Appeal modified and affirmed a judgment of conviction of criminal offenses. The court limited review to the following issues: (1) Can a defendant commit the crime of attempted kidnapping during the commission of carjacking (Pen. Code, § 664/209.5) by attempting to kidnap the victim in an *attempt* to commit a carjacking, or does the crime require the *completed* commission of the crime of carjacking in the course of an attempted kidnapping? (2) Are attempted kidnapping and attempted carjacking lesser included offenses of attempted kidnapping during the commission of carjacking?

**#05-206 *Wagner Construction Co. v. Pacific Mechanical Corp., S136255.*** (B178996; unpublished opinion; Los Angeles County Superior Court; SC081031.) Petition for review after the Court of Appeal affirmed an order denying a petition to compel arbitration. This case presents the following issue: When a party seeks to compel arbitration, can the trial court determine whether a particular claim is barred by a statute of limitations as part of determining whether the party waived the right to arbitrate under Code of Civil Procedure section 1281.2, subdivision (a), or is the application of a statute of limitations always a matter to be resolved by the arbitrator?

**#05-207 *The Limited Stores, Inc. v. Franchise Tax Bd., S136922.*** (A102915; unpublished opinion; Alameda County Superior Court;

(over)

837723-0.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. The court ordered briefing deferred pending decision in *General Motors Corp. v. Franchise Tax Bd.*, S127086 (#04-113), and *Microsoft Corp. v. Franchise Tax Bd.*, S133343 (#05-120), which include the following issues: (1) In calculating the proportion of a unitary business group's income that is subject to California income tax under the Uniform Division of Income for Tax Purposes Act (Rev. & Tax. Code, § 251310 et seq.), are the "gross receipts" of sales of securities measured by the total sales price (including return of principal) or the net proceeds (not including return of principal)? (2) If "gross receipts" includes the return of principal, can the Franchise Tax Board exclude that amount in order to effect an equitable apportionment that fairly represents the taxpayer's business activity in California?

**#05-208 *In re T.W.*, S136916.** (B175355; unpublished opinion; Los Angeles County Superior Court; YJ22598.) Petition for review after the Court of Appeal affirmed in part and reversed in part an order in a wardship proceeding. The court ordered briefing deferred pending decision in *People v. Cage*, S127344 (#04-111), which includes the following issue: Are *all* statements made by an ostensible crime victim to a police officer in response to general investigative questioning "testimonial hearsay" within the meaning of *Crawford v. Washington* (2004) 541 U.S. 36, and inadmissible in the absence of an opportunity to cross-examine the declarant, or does "testimonial hearsay" include only statements made in response to a formal interview at a police station?